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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 STEVEN MEYER, et al.,
5 Plaintiffs,

6 v. 11 CV 6268 (ALC)

7 UNITED STATES TENNIS
8 ASSOCIATION,

9 Defendant.
10 -----x

11 New York, N.Y.
12 May 31, 2012
13 4:07 p.m.

14 Before:

15 HON. MICHAEL H. DOLINGER,

16 District Judge

17 APPEARANCES

18 ABBEY SPANIER RODD & ABRAMS LLP
19 Attorneys for Plaintiffs
20 ORIN KURTZ

21 AKIN GUMP STRAUSS HAUER & FELD LLP
22 Attorneys for Defendant
23 NATHAN J. OLESON

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1 (In open court; case called)

2 THE COURT: What is currently at issue?

3 MR. KURTZ: Good afternoon, your Honor. Orin Kurtz
4 for the plaintiffs.

5 We have a class certification motion due shortly.

6 THE COURT: When is it due?

7 MR. KURTZ: We currently have it as the later of
8 June 15th or two weeks after the resolution of the issues in
9 this conference.

10 THE COURT: OK.

11 MR. KURTZ: In connection with that anticipated
12 motion, there are several categories of documents that we have
13 requested from the defendant, United States Tennis Association,
14 and that the United States Tennis Association has refused to
15 produce, and we are seeking production of those documents.

16 This is a case about failure to pay overtime. It's a
17 class and collective action. And there are documents that
18 would give an indication of what hours the members of the class
19 worked. We, the plaintiffs, are seeking to compel production
20 of those hours, to be able to show how, by common proof, we
21 will flesh out the claims that the class worked more than 40
22 hours per week.

23 Those documents include something called timecards,
24 which the USTA keeps, which show when matches begin and end,
25 and that will show when umpires were umpiring matches. We

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1 have --

2 THE COURT: Are these timecards reflective of or do
3 they identify specific umpires?

4 MR. KURTZ: I don't believe they do, but I don't have
5 knowledge of that. My opponent may know, but it's my
6 understanding they just show when -- we haven't seen any of
7 them. It's my understanding that they would show when the
8 matches begin and end and not particular --

9 THE COURT: That is a separate card for each match?

10 MR. KURTZ: I don't know, your Honor.

11 THE COURT: If you don't know that, can you explain to
12 me, assuming that to be the case, why it would be relevant, if
13 it just shows match A began at 10:30 and ended at 12:00?

14 MR. KURTZ: Because there are also other documents
15 that tie in with that. There are crew sheets which show which
16 umpires worked on which courts, and those, I believe, can be
17 synced up with the timecards that show when matches began and
18 ended.

19 These documents would also help us establish when
20 plays ended each day and when the umpires were at least close
21 to being released for the night, because at the end of the day,
22 when the matches end, the umpires are not free to just leave.
23 If you're working a match and it ends, they have to wait for
24 the chief umpire, who is an employee of the USTA, to give them
25 permission to leave. And that occurs on various points, when

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1 they're not needed anymore, and that could be at the end of
2 play for the day, that could be at the end of their match, but
3 these timecards will show when the matches end and show --

4 THE COURT: But it won't tell you when any individual
5 umpire was allowed to leave. So I don't understand how this
6 becomes relevant to your proof of how long the umpires worked.
7 One umpire might have a match at, say, 10:30, finishes at
8 12:00, maybe he or she does another match at 2:00 to 4:00 and
9 that's the end of his day. How are you going to know that, as
10 opposed to an umpire who works, let's say, a match beginning
11 at 10:00 and ending at 12:00 and then has to stick around for a
12 match from 4:00 to 6:00 and then another from 7:30 to 9:30,
13 let's say?

14 MR. KURTZ: I think, that syncing is with what crew
15 sheets we have will help us determine that.

16 THE COURT: You mean the crew sheets will show who
17 worked and when?

18 MR. KURTZ: Yes.

19 THE COURT: OK, I can understand that. But I don't
20 understand then the timecards.

21 MR. KURTZ: Well, they don't give us a precise ending,
22 but they tell us which crew -- we will know to some degree
23 which crew was on which match, and then --

24 THE COURT: That would be from the crew sheets?

25 MR. KURTZ: That would be from the crew sheets, but

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1 those crew sheets don't have the time on them.

2 THE COURT: Oh, I thought you just said it shows who
3 worked and when.

4 MR. KURTZ: Who worked at which court and which match?

5 THE COURT: OK. And then the timecards would show how
6 long the matches went?

7 MR. KURTZ: Yes.

8 THE COURT: OK. What else?

9 MR. KURTZ: We're also seeking documents -- in order
10 to enter the U.S. Open grounds, it's our understanding that one
11 must swipe credentials. And we have requested documents
12 showing when each umpire's credentials were swiped, which would
13 show when they entered the grounds and could potentially show
14 when they began working.

15 THE COURT: Anything else?

16 MR. KURTZ: We have also requested communications
17 between the USTA and the umpires concerning a discrete set of
18 issues, essentially disciplinary and time issues. This case
19 centers on whether the umpires are independent contractors.

20 THE COURT: There is a dispute about that?

21 MR. KURTZ: There is a dispute about that.

22 And one of the factors is the control exercised over
23 the plaintiffs by the defendant. And we would like the
24 communications between the USTA and any umpire that involved
25 discipline, control. There's an Official's Code of Conduct.

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1 We'd like communications that show enforcement of the
2 Official's Code of Conduct. We do understand that it was
3 pretty -- umpires could be terminated for issues such as
4 complaining to the cafeteria. That's been some testimony we
5 received in this action. There's a pretty extensive control,
6 in our opinion, and we'd like to see the communications between
7 USTA and the umpire that show that control.

8 Also, the USTA receives evaluations that are performed
9 by a certain people who are affiliated with the USTA. These
10 evaluations are granular; they talk about the angle of
11 somebody's hand, of an umpire's hand, in making a call.
12 They're very detailed, and they show great control, and they
13 determine the assignments for the umpires on a daily basis.
14 And we have requested, and would like to receive, those
15 evaluations as well.

16 THE COURT: And the time frame you're looking for?

17 MR. KURTZ: We're looking for the class period of this
18 case, which is the U.S. Opens from the year 2005 to the
19 present.

20 THE COURT: That is through 2011, I take it?

21 MR. KURTZ: Through 2011, and it would be continuing
22 as the time moved forward.

23 THE COURT: Any other items?

24 MR. KURTZ: We're also seeking payroll information,
25 which is essentially just a record of how much each umpire was

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1 paid and which dates they worked. The umpires are paid on a
2 daily basis, and that would again show at least the days that
3 the umpires work, if not the hours. It will not show the hours
4 but it will show which days each umpire worked.

5 THE COURT: And the relevance of that to the class
6 motion is what?

7 MR. KURTZ: Is to, again, show how we can establish,
8 if not the precise hours worked, a general idea of hours worked
9 by common proof that's held by the USTA.

10 THE COURT: How does the payroll information show you
11 the number of hours?

12 MR. KURTZ: It shows the number of days worked.

13 THE COURT: Well, what is the relevance of that to the
14 number of hours worked?

15 MR. KURTZ: From there, we can go to the timecards, to
16 the crew sheets.

17 THE COURT: The timecards will show you the
18 information about who worked on which days. Isn't the payroll
19 information in that respect completely duplicative? What other
20 information does it provide that's pertinent to the class
21 motion?

22 MR. KURTZ: It gives us a more precise idea. Both the
23 crew sheets and motion -- well, we don't know what the
24 timecards look like, but neither of them are -- those will take
25 sorting to really figure out who worked what days; whereas, if

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1 we have payroll records, we can see who worked what days, and
2 it's a much clearer analysis of when --

3 THE COURT: Clearer than what?

4 MR. KURTZ: Clearer than the crew sheets or what we
5 think the timecards will say.

6 THE COURT: Well, if the payroll information is
7 clearer than the timecards and the crew sheets, why do you need
8 the timecards and the crew sheets?

9 MR. KURTZ: Because we also have to prove how many
10 hours everybody worked.

11 THE COURT: I thought that was your purpose supposedly
12 in getting the payroll records. I don't understand what the
13 payroll records are supposed to show then.

14 MR. KURTZ: Well, it's just my understanding that the
15 records here are not -- that there is no single record that's
16 going to give us what we need.

17 THE COURT: Maybe so, but I'm still unclear as to what
18 it is that the payroll records give you that the timecards and
19 the crew sheets don't give you or vice versa.

20 MR. KURTZ: The payroll just gives us a much clearer
21 idea of who worked. I believe some payroll information was
22 attached to the defendants' letters, and it just indicates that
23 Aimee Johnson, one of our plaintiffs, Aimee Johnson worked the
24 following days, paid the following amount, and that's a very
25 concise record of what days she worked.

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1 THE COURT: Anything else?

2 MR. KURTZ: That's it, your Honor.

3 MR. OLESON: Your Honor, Nathan Oleson for defendant
4 United States Tennis Association.

5 It probably makes against to go in reverse order,
6 starting with the payroll information. As your Honor noted,
7 that doesn't actually show the hours worked, but we have also
8 already provided to the plaintiffs -- plaintiffs said we
9 haven't produced the documents. That's not true. We have
10 produced these documents.

11 THE COURT: Which documents?

12 MR. OLESON: These payroll documents.

13 THE COURT: You've produced them already?

14 MR. OLESON: For the named plaintiffs, your Honor.

15 And so, as we note in our letter, to the extent
16 plaintiffs believe that these are common evidence to show time
17 or what have you, they certainly don't need every single
18 payroll record ever created. They can --

19 THE COURT: Is your client prepared to stipulate that
20 the plaintiffs' records are representative of the records of
21 the entire class?

22 MR. OLESON: Not -- maybe not in a legal sense, your
23 Honor, but certainly --

24 THE COURT: In that case, the argument holds no
25 weight. What's your next argument?

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1 MR. OLESON: Maybe if I could, if the Court could
2 indulge me, we're prepared to stipulate that these records
3 exist for the other class members.

4 THE COURT: So what? What does that mean? How does
5 that help adjudicate or advance the ball, in terms of the
6 question of the class, where the plaintiff has the burden of
7 proving not just numerosity but commonality and typicality?

8 MR. OLESON: Correct, your Honor.

9 THE COURT: I don't understand. If your client is not
10 prepared to stipulate as to commonality and typicality, how you
11 can argue with a straight face that the plaintiffs ought to be
12 willing to be limited to their own personal records?

13 MR. OLESON: Well, first of all, this is a
14 representative case where they are taking the position that
15 these class representatives can represent the absent class
16 members without any other individualized inquiry. So,
17 certainly in a class action -- I've never seen a class action,
18 your Honor, where the plaintiff has come in and submitted to
19 the Court, as evidence of commonality, every single pay record
20 for every single employee that ever worked during that time
21 period.

22 THE COURT: They may or may not, depending on the size
23 of the class, but they're certainly entitled to discovery
24 sufficient to demonstrate typicality, and in this case you seem
25 to be cutting off, or proposing that the Court should cut them

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1 off, with just a handful of records in response to which
2 undoubtedly your client will argue that they haven't shown
3 these elements required under Rule 23.

4 MR. OLESON: Your Honor, we wouldn't argue that they
5 have not shown that there is common records that they could
6 point to, for instance, on --

7 THE COURT: I don't understand this business about
8 common records. The plaintiffs are not suing over the records.
9 The plaintiffs are suing on the contention that they have been
10 denied overtime. To establish a basis for a class action, they
11 have to show not merely that they were denied overtime but that
12 sufficient numbers of others also were denied overtime.

13 MR. OLESON: Correct, your Honor.

14 THE COURT: So the fact that there are other records
15 somewhere which are not going to be produced, and they can say
16 they are records that have not been produced, doesn't advance
17 them one whit.

18 MR. OLESON: The plaintiffs' burden, your Honor, is to
19 show there is common evidence available to prove those facts,
20 and having -- I think we attached as Exhibit 1 to our document
21 here -- certainly having these documents in Exhibit 1 and
22 saying they have these same documents for every other potential
23 class members shows that their argument will be, these
24 documents will be common to the class and we can look at these
25 common documents and make this determination.

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1 THE COURT: Do you have another argument on this?

2 MR. OLESON: Well, obviously, your Honor, the other
3 point is that these documents actually don't show any of the
4 hours that any of these individuals worked any particular day.

5 THE COURT: These documents? Let's be more precise.
6 Which documents?

7 MR. OLESON: Sure. The payroll documents.

8 THE COURT: How about the timecards and the crew
9 sheets?

10 MR. OLESON: The crew sheets? We've, again, already
11 produced everything that we have as to those.

12 THE COURT: Well, let's just be careful about this.
13 You say you produced the crew sheets for all members of the
14 class?

15 MR. OLESON: All the crew sheets that we have, your
16 Honor.

17 THE COURT: I'm sorry?

18 MR. OLESON: All the crew sheets that we have, your
19 Honor.

20 THE COURT: About how many members of the class?

21 MR. OLESON: Every year there's about 300 or so
22 umpires.

23 THE COURT: And some number of them, I take it, will
24 continue on from year to year?

25 MR. OLESON: Correct. But these are not

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1 individualized documents, not documents that are in a
2 particular individual's file. Again, we have produced an
3 example of these, and they're basically a run of everybody that
4 umpired on a particular day at a particular court. And so we
5 produced, I believe, more than a thousand pages of these
6 documents. They only go back a couple years because we have
7 really no reason to keep them beyond that point.

8 THE COURT: So they were kept for what period of time?

9 MR. OLESON: I believe we -- it's in our papers, but I
10 believe 2011, 2010, and perhaps 2009, but maybe just 2010,
11 2011.

12 THE COURT: I assume you have someone who can execute
13 a declaration specifying that the crew sheets for preceding
14 years have been destroyed routinely?

15 MR. OLESON: Certainly, your Honor.

16 THE COURT: What about the timecards?

17 MR. OLESON: The timecards? We actually don't keep
18 the data on timecards. Plaintiffs referred to some testimony
19 from Richard Kaufman who's the head official. During the
20 course of the tournament, what will happen is they have these
21 handheld devices that have this data on them that shows the
22 time of the match. So at the end of the match, at the end of
23 the day, they release the length of the match to the press,
24 they make a printout of that, and they keep it at the
25 officials' office at the U.S. Open for that period of time.

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1 After the U.S. Open, there's no real reason to have
2 some of that information. My understanding is, based on the
3 testimony of Mr. Kaufman, this data may be held by the
4 third-party entity that supplies these handheld devices, but we
5 don't have that data in any sort of usable form based on the
6 information I've been given, your Honor.

7 THE COURT: So you're saying, even though there's a
8 hard copy produced, that's all tossed away?

9 MR. OLESON: Correct, your Honor. There is no real
10 reason after the tournament itself to retain these sort of
11 documents at this point.

12 We do have -- part of the issue here is that a number
13 of these issues were never really fully addressed on a
14 meet-and-confer. We did go back and find a listing of document
15 called "Last Ball Struck," which is not the timecards
16 plaintiffs are asking for, but it says the time that the last
17 ball was struck on each court each night. We're prepared to
18 offer those documents in lieu of the timecard documents, that
19 we really don't have. And those wouldn't give the length of
20 any particular match but would show the time that the court
21 essentially shut down for the evening. And since lineup cards
22 stay with the court, I guess that would be, again, the
23 plaintiffs' theory as to evidence of hours.

24 THE COURT: When you say "stay with the court," what
25 does that mean?

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1 MR. OLESON: There are some courts that are
2 exceptions, show courts where there are longer days. But in a
3 typical court, say, one of the -- not Arthur Ashe, but some
4 other court, the line umpires will stay on that court for the
5 duration of the day, and when the day is over they will leave
6 the court and then at some point be released.

7 THE COURT: Are there records reflecting when matches
8 begin on each court and when the last ball is struck?

9 MR. OLESON: We have the last-ball-struck data -- or
10 they're not data, it's actually documents, I've seen them. I
11 don't recall, your Honor, if there is any information on the
12 first ball struck in that document. I can certainly go back
13 and check that. But, generally speaking, the first matches of
14 the day -- and this is the testimony of the plaintiffs
15 themselves -- started at 11:00 a.m. And so there would be at
16 least testimonial --

17 THE COURT: Normally, would it be required, if an
18 umpire is assigned for work that day, that that umpire would
19 show up by no later than 11:00 at his or her assigned court?

20 MR. OLESON: Actually, again, your Honor, there's
21 testimony it's actually 10:00 o'clock that they're expected to
22 be there and be available.

23 THE COURT: So they're all supposed to be there by
24 10:00?

25 MR. OLESON: Correct.

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1 THE COURT: Let's say on a given court, matches go on
2 and off, and eventually the last match ends at, let's say,
3 5:00 o'clock, but there are matches going on on other courts.
4 Would the umpire on the court where the last match has ended be
5 expected to leave at that point or stay? Or what's the --

6 MR. OLESON: Again, generally speaking, their
7 testimony is, if it's a 5:00 o'clock end time, they would be at
8 that point released at some point. Sometimes -- I believe
9 there's testimony as to this -- that sometimes they may be
10 required to move to another court. But that's the type of
11 information that would be shown on these timecards, for
12 instance, or the "Last Ball Struck." Perhaps -- I'm not even
13 sure if they would show on the crew sheets because it would be
14 an ad hoc assignment, if a match was running particularly late
15 and they wanted to leave and umpire and crew on another court,
16 for instance, but those are ad hoc situations that I don't
17 think any of these documents would cover.

18 THE COURT: And people were paid on, what, a per diem
19 basis or an hourly basis? How was that?

20 MR. OLESON: Daily basis, your Honor.

21 Going back to the credentials, too, because they are
22 related to this as well, the credential information, the swipe
23 information, that plaintiffs are seeking, again, doesn't
24 actually show hours worked. What happens is, umpires have the
25 opportunity to take buses to the U.S. Open earlier in the day,

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1 they can arrive early, they have a per diem in addition to
2 their daily rate, they can have breakfast, they can play cards
3 in the umpires' lounge -- they're not required to report until
4 10:00 -- but some show up earlier. And when they walk through
5 the gate, that's when they would swipe their credential. So
6 the credentials themselves, the credential itself, based on the
7 testimony of the plaintiffs themselves, would not have to show
8 when they began to work. It would simply show when they
9 entered the grounds of the facility.

10 Our position on that is that, I think, similar to some
11 of the questions directed to counsel, it simply does not show
12 the actual hours being worked.

13 THE COURT: I take it there would be no dispute that
14 there is an across-the-board requirement that they all show up
15 by 10:00 a.m.?

16 MR. OLESON: Correct, your Honor. Yes, there's one
17 wrinkle to this, but I don't think it makes any difference:
18 Sometimes they have what's called a night crew that will come
19 in at, I believe it's 3:00 o'clock or 2:00 o'clock, but, again,
20 report time for the night crew would be established in the
21 record as the common expectation.

22 I believe that we have covered the timecards, crew
23 sheets, credentials.

24 The evaluations, again, we produced the evaluations
25 for the named plaintiffs. The evaluation form is the same for

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1 every individual who gets these sorts of evaluations at the
2 Open. And, again, our position is that because the information
3 is the same in the form, it simply adds nothing and, in fact,
4 it's actually contrary to plaintiffs' contention that this can
5 be resolved with the representative evidence of the named
6 plaintiffs, that these -- that they need every single
7 evaluation ever conducted of anybody at the Open when the
8 questions in the criteria will be the same on each evaluation.
9 And, again, we have attached those documents at Exhibit 4 of
10 our submission.

11 And then finally, the communications -- I guess I
12 skipped around more than I said I would -- the communications
13 as to certain discipline, again, our position on is that is, we
14 produced everything that that would have related to the named
15 plaintiffs or would have been sent to umpires generally. The
16 idea that the discipline of other people may be relevant to the
17 named plaintiffs' claims and the -- if the named plaintiffs'
18 claims are truly representative, these individualized issues,
19 which would require the testimony of other witnesses is simply
20 not relevant.

21 THE COURT: But again, you're assuming then that the
22 plaintiffs will be able, without the documents, to prove that
23 the named plaintiffs' disciplinary issues will be
24 representative of everyone else. How are they going to prove
25 that without the documents? Unless your client is willing to

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1 stipulate to that?

2 MR. OLESON: That the named plaintiffs are
3 representative?

4 THE COURT: Yes.

5 MR. OLESON: No --

6 THE COURT: Either you stipulate to it or you produce
7 the documents that would be necessary for the plaintiff to
8 prove the fact. You can't have it any third way.

9 MR. OLESON: We're obviously not willing to stipulate
10 to the legal issue of representativeness on that.

11 THE COURT: OK.

12 MR. OLESON: And I believe I've addressed each of the
13 issues that were raised by your Honor. If I've not, please let
14 me know.

15 THE COURT: What's the story with regard to
16 communications, not specifically about discipline, if there is
17 a distinction, but with regard to the enforcement of the
18 so-called Official's Code of Conduct?

19 MR. OLESON: Are you asking me, your Honor?

20 THE COURT: Yes. There is an Official's Code of
21 Conduct?

22 MR. OLESON: There is an Official's Code of Conduct.
23 I'm not aware of any -- first of all, I'm not aware of any
24 emails, standing here today, that relate to that beyond just
25 the general issuance of the Official's Code of Conduct within

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1 certain communications but --

2 THE COURT: Has the client determined whether there
3 are such?

4 MR. OLESON: I'd have to check on that.

5 THE COURT: I take it there's no articulable basis for
6 declining to turn that over --

7 MR. OLESON: Well, I think on that issue, our position
8 on that issue --

9 THE COURT: Excuse me.

10 -- if there is an open issue as to control?

11 MR. OLESON: Our position on that is the same as it
12 was for the disciplinary issues, which I understand you've
13 rejected.

14 THE COURT: I'm not sure if I have rejected anything,
15 as we speak. I'm simply trying to understand the logic behind
16 the argument. That's all.

17 MR. OLESON: Certainly.

18 THE COURT: OK.

19 Let me also just raise one question. In your
20 correspondence with the Court, you alluded to a matter of
21 burden but indicated that you weren't necessarily sure of the
22 degree of burden and sort of left it open.

23 Normally, it is the burden, shall we say, of the party
24 claiming burden, to show the burden and to show it by competent
25 evidence. I take it that's not something you would intend to

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1 do up to now?

2 MR. OLESON: We have, your Honor. Obviously, we were
3 requested to respond on a fairly quick time frame, so we are
4 aware generally of this burden, but we want to go back and put
5 some more -- we're happy to submit a declaration on this issue.

6 THE COURT: You're happy to do what?

7 MR. OLESON: Submit a declaration to articulate this.
8 But at the time, simply the witnesses weren't available, we
9 only had a couple days to respond, but the burden is it related
10 to the credentials, the swipes --

11 THE COURT: The swipe?

12 MR. OLESON: -- at the beginning of the day, again,
13 that only happens at the beginning of the day, these credential
14 swipes are not kept in a database where there is a nice neat
15 swipe credential number, name, and time associated with it;
16 they're kind separately taken. So you have to go in manually
17 with each name, first find the credential numbers that apply to
18 that name for each year, and then run each credential number
19 through the database individually to find each credential swipe
20 for each particular year.

21 So the estimate is that it would take several weeks
22 for the USTA to pull this information together.

23 THE COURT: Let me ask you one other thing with regard
24 to timecards, where you said the information that would be
25 reflected on timecards is contained in some database --

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1 MR. OLESON: There's a handheld device which, again,
2 my understanding, is supplied by a third party -- I'm not sure
3 if it's NCR or what have you -- and that data may be available
4 on that database, and that company may hold that data, but the
5 USTA itself does not keep that data.

6 THE COURT: Who handles the devices in the
7 tournaments?

8 MR. OLESON: The chair umpires who are members of the
9 class.

10 THE COURT: And then they return the device at the end
11 of the tournament; is that how it works?

12 MR. OLESON: Yes, your Honor, that's my understanding.

13 THE COURT: Let me just run through my notes to make
14 sure that we have covered everything.

15 What's in the payroll records, by the way?

16 MR. OLESON: It just simply says the number of days
17 worked over the course of the entire tournament. And then it
18 says whether it's during the qualifier or the main draw of the
19 event, and then the total amount paid, both per day and
20 overall. And, again, that's Exhibit 1 to our submission.

21 THE COURT: OK.

22 Anything else?

23 MR. KURTZ: Your Honor, with regard to the timecards,
24 I believe that if that timecard information is held by some
25 company that the USTA works with or contracts with, that could

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1 be considered within the USTA' possession, custody or control.

2 THE COURT: Not really, but you can get the
3 information from the USTA as to which company it is and seek to
4 subpoena whatever information they have. It does sound, given
5 the nature of the data, that it is highly likely that it's no
6 longer around. But that's up to you. You can seek to subpoena
7 it.

8 MR. KURTZ: Thank you.

9 And regarding the evaluations --

10 THE COURT: How many plaintiffs are there?

11 MR. KURTZ: There are four named plaintiffs.

12 THE COURT: For how many years did each of them work?

13 MR. KURTZ: Of the six years that are going in this
14 case, I believe each of them missed about one year, so each of
15 them worked about five years.

16 I have nothing further for the Court.

17 THE COURT: OK.

18 Let me run through this item by item. Defendant says
19 that it doesn't have any timecards. It's to provide a
20 declaration by someone with personal knowledge attesting to
21 that fact.

22 With regard to crew sheets, it appears to acknowledge
23 that it has crew sheets at least for 2010 and 2011. Those are
24 to be produced. There is a question as to whether it has them
25 for 2009. If it does, then those are to be produced as well.

C5VKMEYC

1 If it says that it has none earlier than those years, it is to
2 provide a declaration by someone with personal knowledge
3 describing the facts pertinent to the disposition of those
4 documents by the defendant.

5 Given what's been discussed up to now, and in the
6 absence of any testimony that would call into question what
7 defendant has represented regarding the swipe data, I am not
8 going to direct that that be produced.

9 With respect to communications of various sorts
10 between the defendant and the umpires, initially, since there
11 is not a claim of burden here, I will direct that they turn
12 over communications that involve any disciplinary actions taken
13 with regard to umpires and any communications regarding the
14 Official's Code of Conduct. That includes any general
15 communication sent to everybody and specific communications, if
16 there are such.

17 Have the evaluations of the four plaintiffs been
18 turned over already?

19 MR. OLESON: Yes, your Honor. And I would note for
20 the record also, we have already produced back in February
21 those 2010-2011 crew sheets.

22 THE COURT: OK.

23 MR. OLESON: And the general communications that you
24 just referenced as the code of conduct.

25 THE COURT: Very well.

C5VKMEYC

1 I am not going to order additional evaluation forms at
2 this time. If there is a showing of need for it, then I'll
3 consider it, but for the moment, to the extent that they may be
4 pertinent on the question of control, it seems to me that there
5 is reason to infer that the evaluations of the four plaintiffs
6 will be sufficient at least to show the nature of the
7 evaluation that presumably USTA uses with regard to all of the
8 umpires. There, I don't see the problem that would command the
9 need for additional production.

10 Let me just make sure I haven't missed something, but
11 I think that's -- oh, yes, there are one or two other things.

12 Defendant has indicated it would be willing to produce
13 the so-called "Last Ball Struck" documents. They are to be
14 produced. If there are any documents that would reflect the
15 comparable beginning of matches, then those are to be produced,
16 although, as I understand it, there seems to be a common
17 understanding that the umpires were supposed to show up by
18 10:00 o'clock except for the late shift people.

19 If it turns out that there are any other subcategories
20 of umpires, that is, umpires who for some reason might have
21 been required to show up earlier, then any such documents
22 relating to them are to be produced, but if that is a
23 nonexistent category, then be so it be, there won't be any such
24 documents, I assume.

25 Anything else at this point, other than setting a date

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1 for this --

2 MR. KURTZ: Your Honor, with regard to evaluations, if
3 none other than the named plaintiffs' evaluations are produced,
4 can there be a declaration stating that for some category,
5 whatever is accurate, that for some category of umpires who
6 received evaluations, it's done on the same form or in the same
7 manner? I can discuss it with opposing counsel --

8 THE COURT: I think you can probably get some sort of
9 agreement with the other side on that. If there's a problem
10 let me know, sure.

11 Anything else at this point?

12 MR. OLESON: No, your Honor.

13 THE COURT: OK. Can you get this all done in, say, a
14 week?

15 MR. OLESON: Your Honor, I would like to consult with
16 my client just to make sure. Is it possible to call your
17 chambers tomorrow or call opposing counsel with a proposed
18 date?

19 THE COURT: Talk to opposing counsel and send me
20 something by fax tomorrow. OK?

21 MR. OLESON: Certainly, your Honor.

22 THE COURT: Thank you.

23 MR. OLESON: Thank you, your Honor.

24 MR. KURTZ: Thank you, your Honor.

25 * * *